THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 15917 of 2004

O r d e r:

The petitioner is working as Clerk-cum-Cashier with the respondents – Indian Bank. While so, on the ground that the petitioner misappropriated an amount of Rs.25,000/-. remitted by an account holder by making fictitious entries in his pass book and SB ledger account, and had fraudulently withdrawn an amount of Rs.600/- from the account of another customer, resulting in loss of

Rs.468.30 ps. to the bank, the 1st respondent, namely the Assistant General Manager/Disciplinary Authority, vide proceedings dated 30.08.2002, placed the petitioner under suspension, pending enquiry/investigation. On the same set of facts, the respondents apart from placing the petitioner under suspension, also lodged a police complaint against him on 17.12.2002, which was registered as Crime No. 308 of 2002 for the offence punishable under

Section 409 I.P.C. When the 2nd respondent, namely the Enquiry Officer, with a view to conduct enquiry into the allegations, issued proceedings dated 20.08.2004, informing the petitioner that he would be conducting departmental enquiry on 30.08.2004 and that he should make himself available for enquiry, the petitioner filed the present writ petition assailing the said proceedings.

By order dated 03.09.2004, this Court while admitting the writ petition, granted interim stay of the proceedings dated 30.08.2004 for a period of one month, and as no counter was filed by the respondents, the interim order was extended until further orders. To vacate the said interim order, the respondents-Indian Bank filed W.V.M.P. No. 772 of

2006. Though the vacate stay petition is listed for hearing, both the learned counsel for the petitioner as well as the learned Standing Counsel for the respondents-Indian Bank agreed for disposal of the main writ petition itself, and therefore, the writ petition was heard finally.

The learned counsel for the petitioner submits that since the departmental enquiry and the criminal proceedings are grounded on the same set of facts, the departmental enquiry should be stayed until the conclusion of the criminal proceedings, and more so having regard to Clause 4 of the Settlement on Disciplinary Action Procedure for Workmen, reached between the Management and the Unions, which states that when the criminal trial is going on, the departmental proceedings shall be stayed, but the action of the respondents in seeking to proceed with the departmental enquiry, pending conclusion of the criminal proceedings, is illegal and arbitrary. In support of this contention he placed reliance on the judgment of the apex Court in **State of Rajasthan v. B.K. Meena**[1]**.** He thus prayed that the impugned proceedings, issued by the 2nd respondent proceeding to conduct the departmental enquiry, be set aside, the writ petition be allowed, and the departmental proceedings be stayed until the termination of the criminal proceedings.

On the other hand, the learned Standing Counsel for the respondents-Indian Bank submitted that pendency of criminal proceedings is not a bar for the respondents to proceed with the departmental enquiry, and more so when the respondents are entitled to conduct departmental enquiry against the petitioner even if he acquitted of the criminal charge. He submitted that Clause 4 of the Settlement on Disciplinary Action Procedure for Workmen, reached between the Management and the Unions, on which the petitioner

heavy reliance for staying the departmental enquiry, until the termination of the criminal proceedings, does not assist him in any manner, for the said Clause does not bar initiation of disciplinary enquiry. He submitted that the criminal proceedings could not cross the stage of filing charge sheet because the petitioner absconded from the station. Hence, he prayed that the interim order be vacated and the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-Indian Bank.

The law is well settled that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In disciplinary proceedings, the question is whether the respondent is guilty of misconduct as would merit his removal from service or visited with a lesser punishment, as the case may be, whereas in criminal proceedings, the question is whether the offences registered against him under the provisions of the Indian Penal Code or any other penal Act/Section, are established and, if established, what is the sentence that should be imposed upon him. This apart, the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the departmental proceedings and criminal proceedings are entirely distinct and different. Staying of disciplinary proceedings, pending criminal proceedings, should not be as a matter of course, but based on a considered decision, made having regard to the facts and circumstances of a given case, and no hard and fast rule can be enunciated in that behalf. The only ground on which the departmental proceedings can be stayed pending termination of the criminal proceedings, is “that the defence of the employee in the criminal case may not be prejudiced”. This may be done only in cases of grave nature involving complicated questions of

law and fact. Further even if the disciplinary proceedings are stayed at one stage, the decision may require reconsideration if the criminal proceedings gets unduly delayed[2].

This being the position of law, it may be noticed whether the petitioner is entitled to seek stay of the disciplinary proceedings pending conclusion of the criminal proceedings, particularly having regard to Clause 4 of the Settlement on Disciplinary Action Procedure for Workmen, reached between the Management and the Unions. Clause 4 of the Settlement on Disciplinary Action Procedure for Workmen, reached between the Management and the Unions, reads as follows:

> If after steps have been taken to prosecute an employee or to get him prosecuted for an offence, he is not put on trial within a year of the commission of the commission of the offence, the management may then deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct" as defined below; provided that if the authority which was to start prosecution proceedings refuses to do so or comes to the conclusion that there is no case for prosecution it shall be open to the management proceed against the employee under the provisions set out below in Clauses 11 and 12 infra relating to discharge, but he shall be deemed to have been on duty during the period of suspension, if any, and shall be entitled to full wages and allowances and to all other privileges for such period. In the event of the management deciding, after enquiry, not to continue him in service, he shall be liable only for termination within three months' pay and allowances in lieu of notice as provided in Clause 3 above. If within the pendency of the proceedings thus instituted, he is put on trial, such proceedings shall be stayed pending the completion of the trial, after which the provisions mentioned in Clause 3 above shall apply.

The sum and substance of the above provision is that if after steps have been taken to prosecute an employee or to get him prosecuted for an offence, the employee is not put on trial within a year of the commission of the offence, then the management may deal with him as if he had committed an act of "gross misconduct" or of "minor misconduct", and in case, he is put on trial within one year, then the departmental enquiry shall be stayed pending the completion of the trial. In the instant case, the crime was registered on 17.12.2002, and admittedly, before expiry of one year from the said date i.e. by

16.12.2003, the petitioner was not put on trial. Since the petitioner was not put on trial within one year from the date of registration of the crime, the respondents having regard to Clause 4 of the Settlement on Disciplinary Action Procedure for Workmen, reached between the Management and the Unions, are entitled to proceed against the petitioner for the acts of "gross misconduct" or of "minor misconduct" as the case may be by initiating departmental enquiry. Had the petitioner been put on trial within one year from the date of registration of offence, then he would have been justified in contending that since the criminal trial is in progress, the departmental enquiry should be stayed till the termination of the criminal trial, but that is not the case on hand. The petitioner instead of co-operating with the conclusion of the criminal trial, it is the contended by the respondents has absconded from the station and that the criminal proceedings could not cross the stage of filing of charge sheet. The departmental proceedings cannot be allowed to be stalled by the petitioner until the conclusion of the criminal trial, and more so when he is said to be not co-operating with its conclusion. Be that as it may, the law is well settled that disciplinary enquiry cannot and should not be delayed unduly, and undue delay of conclusion of criminal proceedings, itself is a ground for the management to go ahead with the disciplinary enquiry, even if the disciplinary proceedings were stayed at an earlier stage. The apex Court in **State of Rajasthan v. B.K. Meena**, upon which the learned counsel for the petitioner placed reliance, has cautioned that it is not in the interest of the administration to keep a delinquent officer accused of serious misdemanour until the conclusion of the criminal trial, which may take a long time, and that the interest of the administration and good governance demand conclusion of the departmental proceedings expeditiously, and that disciplinary proceedings cannot be stayed as a

matter of course until the conclusion of criminal trial, and that it is always open to the management to reconsider its decision to continue the disciplinary proceedings if they happen to have been stayed at an earlier stage or initiate departmental proceedings in the event the employee is acquitted in the criminal case. In that view of the matter, no exception can be taken to the action of the 2nd respondent in issuing the impugned proceedings, calling upon the petitioner to appear for the departmental enquiry.

In the result, the writ petition is dismissed. The interim order granted by this Court, pending disposal of the writ petition, is vacated. The respondents are at liberty to proceed with the departmental enquiry, initiated against the petitioner. No costs.

N.V. RAMANA, J.

Dated: 14th September, 2006.
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[1] AIR 1997 SC 13

[2] See (a) State of Rajasthan v. B.K. Meena
(b) Cholan Roadways Ltd. v. G. Thirugnanasambandam = (2005) 3 SCC 241